

Evaluation of Public K-12 School Site Selection Procedures

by the

**California Seismic Safety Commission
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Background

Senator Tom Hayden asked the Seismic Safety Commission to review the seismic safety of the Belmont Learning Complex now under construction in Los Angeles. The Commission responded in July 1999 by directing its staff to summarize current state laws and regulations affecting geologic hazards and seismic safety as they relate to the site selection of public schools statewide. The Commission defers to the Bureau of State Audit's review of the Belmont site specifically. The Commission conferred with key state agencies, and developed its evaluation and recommendations below for considerations by others as they judge the adequacy of the state's current site selection policies.

Introduction

Site selections for public schools can be lengthy and complex procedures with many political, legal and technical hurdles. Site selections often involve numerous public hearings and correspondence on environmental impacts, political opposition from the public and other agencies, real estate appraisal disputes, condemnation negotiations, litigation, technical reports with complex evaluations, and recommendations for mitigation. Success hinges on school districts planning ahead using experienced site selection teams to avoid pitfalls.

School districts vary widely in how they manage site selections. Some large school districts approach site selections with teams of specialists and legal advisors. Small school districts, some of which rarely encounter the need to select new sites, often assign this task to a single staff member with little or no experience, minimal legal counsel or in-house technical support. All districts rely on consultants for technical evaluations and recommendations. School districts rely heavily on advice, regulations and guidelines from the Department of Education.

Site selection and the exercise of eminent domain can be litigious since landowners are prone to sue over lost property value. As a result, technical consultants are often reluctant to make definitive findings and recommendations without euphemisms. This makes decisions all the more difficult for less experienced decision-makers since the seriousness of site hazards or the true costs and reliability of mitigation measures may not be clear. School boards and their site advisory committees will rarely have technical experts in engineering or pertinent sciences like geology, seismology, or toxics, so until recently there was almost exclusive reliance on the advice from hired consultants about these subjects. School districts – particularly ones that self-certify their sites – face considerable risks as they try to avoid pitfalls in selecting sites.

A long-standing principle for ensuring effective government is independent and timely checks and balances by neutral experts. This principle is not currently applied to the fullest extent for public school site selections.

For example, for years the Department of Education approved school sites by only checking whether or not districts considered toxics and geologic hazards. The Department did not routinely use technical expertise needed to judge the completeness or the adequacy of mitigation measures recommended by others. In this sense, the Department provided only limited checks, but until recently did not balance, i.e. confirm, all the technical aspects of the proposals and mitigation measures – particularly for toxic and geologic hazard issues. Based on the Department's site evaluation forms, the Department may not review the technical thoroughness or merits of key issues, even though their regulations and guidelines imply that they do.

Despite this shortcoming, the Department's earlier policies generally served the state well because nearly all districts and consultants are motivated to do their best to ensure public school safety while minimizing development and permitting costs and delays. However, as undeveloped land becomes more scarce, sites with prior use, toxics and geologic hazards are more frequent candidates for new schools. Furthermore, the California Environmental Quality Act evaluation procedures and mitigation measures for toxic and geologic disciplines have grown increasingly complex. The public's tolerance for such risks has also decreased, so the State's periodic reassessment and adjustment of the standard of care for ensuring independent checks and balances is warranted.

Recent Changes to Ensure Proper Site Selection

Despite comprehensive laws, regulations and guidelines for school site selection, there are still apparent weaknesses in the process and they crop up as problems throughout the state. The Legislature recognized this with a new law in 1998 (SB 50) requiring the Department of Education to certify that all new sites are free of toxic contamination that would be unsafe for students and staff.

The Department of Education recently responded to SB 50 with a new Advisory Policy 99-01 that calls for Environmental Site Assessments for toxics in accordance with national standards by licensed or registered professionals. The Department also drafted proposed regulations containing similar language. They are currently undergoing legal review and may be adopted by late 1999. In the meantime, the Department is encouraging districts to comply with its advisory policy.

The Department of Education's advisory also calls for close coordination and certification by a state Lead Environmental Agency if a site has potential toxics problems. The state Lead Environmental Agency will also oversee remediation measures.

Recommendations for Consistency in Site Review Procedures

Geologic and Other Earthquake-Related Hazards:

For consistency sake, the Department of Education should consider adopting requirements similar to Advisory Policy 99-01 for sites that contain geologic and earthquake-related hazards. These include, but are not limited to, the potential for active fault rupture, liquefaction, lateral spreading, earthquake-induced landslides, pressure ridges, tsunami or seiche inundation, dam inundation, and flooding. While ground shaking continues to be the main source of earthquake losses, school districts can avoid additional risk by selecting sites without these other hazards listed above.

The Department should require all school districts to make site evaluations with California-certified Engineering Geologists, in consultation with California-registered Geotechnical Engineers in compliance with the most recent California Division of Mines and Geology Notes 42, 44, and 48 and Special Publication 117. The Department should consider revising its Advisory Policy 99-01 and its latest draft regulations for Title 5 to ensure that school districts use appropriately state qualified, certified or registered professionals for site evaluations.

All sites should be independently reviewed by the California Division of Mines and Geology. For those sites with the potential for geologic and earthquake-related hazards listed above, the Department of Education should also engage one or more of the following state agencies, depending on the nature of the hazards, to closely coordinate with school districts, certify site evaluations, and monitor applicable mitigation measures:

- Division of Mines and Geology within the Department of Conservation
- Division of the State Architect within the Department of General Services
- Division of Dam Safety within the Department of Water Resources
- Governor's Office of Emergency Services
- Coastal Commission (for schools located within the Coastal Zone)

Unique Mitigation Measures:

While avoidance of sites with hazards is the best form of mitigation, the Department should be aware that other unique mitigation measures might trigger the need for additional expertise beyond normally anticipated capabilities by state agencies. For example, it is conceivable that mitigation for toxics on sites may be affected by ground motions and may warrant forced ventilation or special geotechnical engineering measures. In this case, reliable systems designed and checked by licensed geotechnical, mechanical and electrical engineers may be justified. The Division of the State Architect could be the appropriate state agency to independently review such mitigation measures. However, the Division currently has no geotechnical, mechanical or electrical engineers on staff to check plans and observe construction. In such a case, the Division could be authorized by the Department of Education to hire the necessary consultants under the appropriate supervision of an architect or engineer on the Division's staff.

In any event, in-house professional supervision should be a condition for state agencies hiring private consultants.

Self-Certification of Site Selections by School Districts:

In the interests of expediting the site selection approval process, the State passed a law allowing school districts to self-certify that their sites complied with the Department of Education's guidelines, as well as state laws and regulations. This act eliminated the only independent review in the approval process. The Department of Education does not recommend that school districts use self-certification because "in many cases, the general public will question the school site selection, and the state's oversight process is very helpful in validating their selections." (99-01) The Department of Education is particularly concerned with self-certified school sites within large, newly planned residential developments. Districts are often placed under pressure to quickly certify less than desirable sites. The Commission concurs with the Department of Education that the potential for perceived conflicts of interest can be minimized by independent and timely checks and balances. However, state laws would have to change to preclude district self-certification.

Interagency Agreements:

The Commission believes that the best policy is a single line of responsibility for ensuring site compliance with the Department of Education taking the lead. The Department should ensure that it has the authority to enter into inter-agency agreements, to arrange for appropriately qualified and independent reviewers without delay, as well as to collect and disburse fees payable by school districts commensurate with review services provided by other state agencies.